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10/587,162

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Johann Magg

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EXAMINER

ALEXANDER, REGINALD

ART UNIT

PAPER NUMBER

3742

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**BEFORE THE BOARD OF PATENT APPEALS
AND INTERFERENCES**

Application Number: 10/587,162
Filing Date: April 12, 2007
Appellant(s): MAGG ET AL.

Andre Pallapies
For Appellant

EXAMINER'S ANSWER

This is in response to the appeal brief filed 30 March 2010 appealing from the Office action mailed 16 December 200.

(1) Real Party in Interest

The examiner has no comment on the statement, or lack of statement, identifying by name the real party in interest in the brief.

(2) Related Appeals and Interferences

The examiner is not aware of any related appeals, interferences, or judicial proceedings which will directly affect or be directly affected by or have a bearing on the Board's decision in the pending appeal.

(3) Status of Claims

The following is a list of claims that are rejected and pending in the application:

13-38

(4) Status of Amendments After Final

The examiner has no comment on the appellant's statement of the status of amendments after final rejection contained in the brief.

(5) Summary of Claimed Subject Matter

The examiner has no comment on the summary of claimed subject matter contained in the brief.

(6) Grounds of Rejection to be Reviewed on Appeal

The examiner has no comment on the appellant's statement of the grounds of rejection to be reviewed on appeal. Every ground of rejection set forth in the Office action from which the appeal is taken (as modified by any advisory actions) is being maintained by the examiner except for the grounds of rejection (if any) listed under the

subheading "WITHDRAWN REJECTIONS." New grounds of rejection (if any) are provided under the subheading "NEW GROUNDS OF REJECTION."

(7) Claims Appendix

The examiner has no comment on the copy of the appealed claims contained in the Appendix to the appellant's brief.

(8) Evidence Relied Upon

6,009,792	KRAAN	01-2000
DE 3602665 GOCKELMANN, 08-1987		

(9) Grounds of Rejection

The following ground(s) of rejection are applicable to the appealed claims:

Claims 13, 26 and 38 are rejected under 35 U.S.C. 103(a) as being unpatentable over Kraan in view of DE 3602665.

There is disclosed in Kraan a coffee machine for dispensing coffee to a coffee receptacle, comprising: a brewing chamber 4 having an outlet 22 for coffee; and impact surface 28 located downstream from the outlet and at a fixed distance from the outlet; an a spout 26 for discharging coffee from the machine, the spout having a discharge end.

There is disclosed in DE 3602665 a height adjustable spout for dispensing coffee from a coffee machine to coffee receptacles of varied heights and sizes.

It would have been obvious to one skilled in the art to substitute the spout arrangement of Kraan with the spout arrangement taught in DE 3602665, in order to allow use of the coffee machine with receptacles of varied heights and sizes.

(10) Response to Argument

Claim 13

Appellant argues that Gockelmann (DE 3602665) does not disclose a height adjustable spout. But, discloses instead, three fixed-height elements, each with its own opening.

In response to Appellant's argument, it should first be noted that claim 13 recites "a spout which is height-adjustable". There is no disclosure of a single outlet or a single element. The arrangement of Gockelmann of three elements which together form a nozzle allows for the discharge of coffee, from an outlet of the coffee machine, at three separate heights. Thus, it can be considered that the three element arrangement (nozzle) of Gockelmann is height adjustable. Appellant at no point in the claim recites any means for moving or adjusting the nozzle. And, therefore, discloses no particular movement arrangement for the nozzle. Thus, it is the opinion of the Examiner that the Gockelmann reference, in combination with Kraan, structurally reads on the recited claim arrangement.

Claim 26

Appellant argues that for an element of Gockelmann to correspond to the spout of claim 26, that element must have a "discharge end from which the coffee is discharged from the coffee machine". As recited above, the position of the Examiner is that the three element arrangement taught in Gockelmann is to be considered to read on Appellant's claimed nozzle. Viewing this as the case it can be argued that the

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discharge end of the nozzle is different (height adjusted) depending upon which of the three elements is presented to transport coffee therethrough.

(11) Related Proceeding(s) Appendix

No decision rendered by a court or the Board is identified by the examiner in the Related Appeals and Interferences section of this examiner's answer.

For the above reasons, it is believed that the rejections should be sustained.

Respectfully submitted,

Reginald L. Alexander

/Reginald L. Alexander/

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/TU B HOANG/

Supervisory Patent Examiner, Art Unit 3742

/Henry Yuen/

Supervisory Patent Examiner, TC 3700